



SENTENCING IN WISCONSIN

Snapshots of Information on Wisconsin Sentencing

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Non-Violent vs. Violent Crime and the Risk of Re-Offense

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Criminal recidivism has always been a principal concern for those involved in the Wisconsin criminal justice system. An offender's likelihood to re-offend is one of the primary criteria used by judges in determining proper sentences. The Sentencing Guideline Worksheets used by Wisconsin judges utilize a grid by which an offender's sentence is recommended on the basis of two factors: Offense Severity, which reflects the need for punishment based on the wrongfulness of the defendant's conduct, and Risk Assessment, which pertains to the defendant's likelihood to re-offend and the need to incapacitate the defendant in order to maintain public safety.¹

Recap of Previous Findings

In the previous snapshot on repeat crime and Legal Status², it was reported that:

- ♦ 24% of all crime documented took place while the defendant was on Legal Status³
- ♦ 40.3% of these "Legal Status Crimes" were the same as the original offense⁴
- ♦ 20.7% of "Legal Status Crimes" were the same offense, having been repeated multiple times⁵
- ♦ 48.1% of non-violent repeat crime was committed by "multiple offenders"
- ♦ 68% of violent repeat crime was committed by "multiple offenders"

It was also addressed that the indication that violent offenders tend to repeat more often than non-violent offenders is reflected in the Sentencing Guidelines Risk Assessment Notes, which place a defendant at "Medium Risk" for a non-violent felony committed while on legal status, and "High Risk" for a violent felony committed on legal status.⁶

Finally, it was discussed that the seemingly greater tendency for violent offenders to repeat the same offense multiple times may undermine accurate assessment of non-violent offenders' risk to repeat the same offense at least once. The goal of this follow-up snapshot is to continue the breakdown between non-violent and violent recidivism in order to more accurately assess the threat posed by each.

Non-Violent vs. Violent Crime

As of March 1, 2005, the Commission had collected data from the courts on 1,619 felonies committed since February 1, 2003 (when the sentencing guidelines worksheets went into effect). 392 (24.2%) of these felonies were committed while on Legal Status. Of these crimes, 71.7% were non-violent offenses, and 28.3% were violent offenses (See Table 1).

The non-violent offenses which the Commission collects data on are:

- ♦ Burglary
- ♦ Forgery/Forgery Uttering
- ♦ Possession w/ Intent to Deliver Cocaine (less than 1 gram)
- ♦ Possession w/ Intent to Deliver THC (200 – 500 grams)
- ♦ Theft (less than \$10,000)

The violent offenses which the Commission collects data on are:

- ♦ Armed Robbery
- ♦ Robbery
- ♦ 1st Degree Sexual Assault
- ♦ 2nd Degree Sexual Assault
- ♦ 1st Degree Sexual Assault of a Child
- ♦ 2nd Degree Sexual Assault of a Child

Table 1: All Crime			
	Crimes (N)	Legal Status (N)	Legal Status (%)
Non-Violent	1045	281	71.7%
Violent	574	111	28.3%

*highlighted cells merely indicate which category of crime has the higher rate of offense

The Risk of Repeat

From this point, we adopt a different view of recidivism rates. Rather than viewing all offenders as identical (which proves problematic, due to the disproportionate number of cases), we will consider non-violent and violent crime separately, in order to determine the frequency of re-offense within each category. So, instead of asking “How much of all crime does non-violent repeat crime make up?” the following data asks “How much of repeat non-violent crime is committed while on legal status?” etc. (See Table 2).

Table 2: Repeat Crime ⁴			
	Repeat Offenders (N)	Legal Status (N)	Legal Status (%)
Non-Violent	302	132	43.7%
Violent	82	28	34.1%

Multiple Repetitions

As with the previous snapshot, a distinction is made between crimes which were repeated at least once and cases where judges noted “Multiple convictions same as/similar to previous offenses.” In these cases, the worksheet data revealed non-violent and violent frequencies that were almost too close to make a distinction between (See Table 3). This may be taken to suggest any number of things, including the possibility that the sentencing guidelines improperly add weight to the risk of violent re-offense in comparison to its non-violent counterpart.

Table 3: Multiple Repeat Crime ⁵			
	Repeat Offenders (N)	Legal Status (N)	Legal Status (%)
Non-Violent	162	63	38.9%
Violent	48	19	39.6%

Implications

It is possible that the sentencing guidelines improperly consider the risk of violent re-offense to be more imminent than that of non-violent re-offense. According to the data reported above, non-violent offenders do have a greater tendency to repeat. However, it should not be forgotten that the previous snapshot determined that violent “multiple offenders” commit a greater proportion of general repeat crime than their non-violent counterparts.

Also, the Commission recognizes the need for accurate reporting from judges in all cases regarding worksheet data. Recidivism rates reported on the worksheets may not accurately describe actual rates in Wisconsin, unless judicial reporting is complete.

¹ See *Wisconsin Sentencing Guidelines Notes*, pp. 3, 12.

² See *Legal Status and Repeat Crime in Wisconsin*, <http://wsc.wi.gov/docview.asp?docid=2766>

³ See *Wisconsin Sentencing Guidelines Notes*, pp. 16-17. The *Notes* state that an offender has **Legal Status** if, at the time of the offense, the defendant was: on probation, on parole, subject to any form of extended supervision, an escapee, an absconder, or a current inmate.

⁴ For the purposes of this snapshot, **Repeat Offenders** refers to cases where judges have noted “Present Offense same as/similar to previous offense.” That is, the offender has already been convicted of this crime once before.

⁵ For the purposes of this snapshot, **Multiple Offenders** refers to cases where judge have noted “Multiple convictions same as/similar to previous offenses. That is, the offender has already been convicted of this crime multiple times before.

⁶ See *Wisconsin Sentencing Guidelines Notes*, p. 18.